

Office of the Secretary of the Treasury

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claim shall be effected or collection action terminated except upon recommendation of the General Counsel or the appropriate bureau counsel or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is \$300 or less.

§ 5.32 Definitions.

(a) *Administrative offset*, as defined in 31 U.S.C. 3701(a)(1), means “withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government shall be excluded.

§ 5.33 General.

(a) The Secretary or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interests of the United States to collect the debt by administrative offset because of the decreased costs of collection and the acceleration in the payment of the debt;

(b) The Secretary, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Secretary, or his or her designee, may request another agency that holds funds payable to a Treasury debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the six-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed by other agencies of the United States or by any State or local government.

§ 5.34 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to the Department. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of the Department to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of the Department with respect to the debt;

(c) An opportunity for review within the Department of the determination of the Department with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 5.35 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of debt, or the terms of repayment. A request to review a disputed debt must be submitted to the Treasury official who provided notification within 30 calendar days of the receipt of the written notice described in § 5.34.

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(b) If the debtor requests an opportunity to inspect or copy the Department's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute by the debtor, transactions in any of the debtor's account(s) maintained in the Department may be temporarily suspended. Depending on the type of transaction the suspension could preclude its payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be immediately lifted.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 5.36 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of the Department's request for the statement. At the Department's option, a confess-judgment note or bond of indemnity with surety may be required for installment agreements. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 CFR 5.3.

§ 5.37 Administrative offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 5.35 or if as a result

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of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) *Requests for offset to other Federal agencies.* The Secretary or his or her designee may request that funds due and payable to a debtor by another Federal agency be administratively offset in order to collect a debt owed to the Department by that debtor. In requesting administrative offset, the Department, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

- (1) That the debtor owes the debt;
- (2) The amount and basis of the debt; and
- (3) That the agency has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Department be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Department shall initiate the requested offset only upon:

- (1) Receipt of written certification from the creditor agency:
 - (i) That the debtor owes the debt;
 - (ii) The amount and basis of the debt;
 - (iii) That the agency has prescribed regulations for the exercise of administrative offset; and
 - (iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.
- (2) A determination by the Department that collection by offset against funds payable by the Department would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such offset would not otherwise be contrary to law.

§ 5.38 Jeopardy procedure.

The Department may effect an administrative offset against a payment to be made to the debtor prior to the